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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT SEATTLE

10 JAMES C. DURKIN,

11                   Plaintiff,

12                   v.

13 ALASKA AIRLINES, INC.,

14                   Defendant.

CASE NO. C10-1779JLR

ORDER GRANTING MOTION  
TO DISMISS

15         Before the court is Defendant Alaska Airlines, Inc.’s (“Alaska Airlines”) motion  
16 to dismiss Plaintiff James C. Durkin’s complaint pursuant to Rule 12(b)(6) of the Federal  
17 Rules of Civil Procedure (Dkt. # 4). Having considered the submissions of the parties  
18 and the relevant law, and no party having requested oral argument, the court GRANTS  
19 Alaska Airlines’ motion to dismiss for failure to state a claim (Dkt. # 4). The court  
20 dismisses the complaint but grants Mr. Durkin 30 days to file an amended complaint  
21 consistent with this order. Finally, the court strikes Mr. Durkin’s motion to compel

1 arbitration without prejudice to his renewing it if the case proceeds to the next stage in  
2 the litigation (Dkt. # 12).

3 **I. BACKGROUND**

4 Mr. Durkin was employed as a pilot by Alaska Airlines from 1975 until his  
5 retirement in June 2008. (Compl. (Dkt. # 1), Ex. A.) On October 1, 2010, Mr. Durkin  
6 filed a form complaint in King County Superior Court. (*Id.*) Mr. Durkin makes no  
7 allegations or claims in his complaint but rather states “see attached” in the place  
8 provided on the form for making factual allegations. (*Id.* at ¶¶ 3.1-3.4.) The attachment  
9 is a June 25, 2010 letter to the United States Equal Employment Opportunity  
10 Commission (“EEOC”). (*Id.*, Ex. A.) In the letter, Mr. Durkin alleges that he was  
11 harassed by his employer, Alaska Airlines, because he complained about pray cards on  
12 his crew meal tray. (*Id.*) Mr. Durkin also alleges that he was forced to retire in June  
13 2008 “under duress.” (*Id.*) Based on Mr. Durkin’s EEOC letter, on November 2, 2010,  
14 Alaska Airlines removed the case to this court asserting federal question jurisdiction.  
15 (Not. of Removal (Dkt. # 1) at ¶ 4.) Alaska Airlines interpreted Mr. Durkin’s claim as  
16 one for religious discrimination pursuant to Title VII of the Civil Rights Act of 1964, 42  
17 U.S.C. § 2000e *et seq.* (*Id.*) The court agreed with Alaska Airlines that this was the best  
18 interpretation as to the bases for Mr. Durkin’s claims and permitted the case to proceed in  
19 this court.

20 Shortly after removing the matter from state court, Alaska Airlines filed the instant  
21 motion to dismiss. Mr. Durkin responded to the motion with a letter to the court that  
22 does not address the issues raised in the motion. (Letter Resp. (Dkt. # 7) at 1.) Instead

1 his letter discusses sexual harassment against another female pilot and an allegation that  
2 there is an atmosphere of racism within Alaska Airlines. (*Id.*) In addition to his letter,  
3 Mr. Durkin attached approximately 86 pages of exhibits that consist of chronologies of  
4 events, emails, news articles, excerpts from training manuals, and his own  
5 correspondence to the EEOC. (*Id.* at 2-87.) None of the exhibits have been authenticated  
6 and Mr. Durkin’s own chronology is a rambling assortment of allegations against not  
7 only Alaska Airlines but the Transportation Security Administration and his union, the  
8 Air Line Pilots Association. (*Id.*)

## II. ANALYSIS

When considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the court construes the complaint in the light most favorable to the non-moving party. *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005). The court must accept all well-pleaded facts as true and draw all reasonable inferences in favor of the plaintiff. *Wyler Summit P'ship v. Turner Broad. Sys.*, 135 F.3d 658, 661 (9th Cir. 1998). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, \_\_\_ U.S. \_\_\_, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); see *al-Kidd v. Ashcroft*, 580 F.3d 949, 956 (9th Cir. 2009). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* In the event the court finds that dismissal is warranted, the

1 court should grant the plaintiff leave to amend unless amendment would be futile. *Lopez*  
2 *v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

3 While a pro se litigant's pleadings and papers are held to a less stringent standard  
4 than those of represented parties, *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the Ninth  
5 Circuit has held that *pro se* parties are not excused from following the rules and orders of  
6 the court. *See Jacobsen v. Filler*, 790 F.2d 1362, 1364-65 (9th Cir. 1986).

7 Both Mr. Durkin's complaint and his response to the motion to dismiss consist  
8 entirely of letters and chronologies that appear to have been drafted by Mr. Durkin, as  
9 well as various seemingly unrelated exhibits, such as email notices of coworkers that  
10 have passed away and notices of new airplane technology. (*See generally* Compl. and  
11 Resp.) The court cannot consider these attachments. Under the rubric governing motions  
12 to dismiss, the court is not permitted to consider exhibits that are not part of the  
13 complaint. *See Fed. R. Civ. P. 12(d)*. But, even if the court could consider the exhibits,  
14 they have not been properly authenticated so as to be admissible. *See Fed. R. Evid. 901*  
15 (explaining that the rule of authentication is a condition precedent to admissibility).

16 Setting aside the procedural irregularities associated with Mr. Durkin's response to  
17 the motion, Mr. Durkin's "complaint" does not even meet the basic pleading  
18 requirements set forth in Federal Rule of Civil Procedure 8(a). Rule 8(a) provides that a  
19 pleading, which is the complaint in this case, "must contain: (1) a short and plain  
20 statement of the grounds for the court's jurisdiction . . .; (2) a short and plain statement of  
21 the claim showing that the pleader is entitled to relief; and (3) a demand for the relief  
22 sought . . ." Fed. R. Civ. P. 8(a). Mr. Durkin's complaint addresses only the third

1 element of the rule. His complaint fails to set forth the basis for this court's jurisdiction  
2 and fails to provide a short and plain statement of his claims. Although the court  
3 acknowledges Mr. Durkin's status as a *pro se* plaintiff and thus affords him greater  
4 deference in attempting to discern the nature of his claim, it cannot turn a blind eye to a  
5 complaint so lacking in detail that it does not permit Alaska Airlines to even frame an  
6 answer to his allegations.

7 **III. CONCLUSION**

8 For the reasons stated, the court GRANTS the motion to dismiss for failure to state  
9 a claim pursuant to Rule 12(b)(6) (Dkt. # 4). Because the court cannot determine  
10 whether an amendment to the complaint would be futile, *see Lopez*, 203 F.3d at 1127, the  
11 court grants Mr. Durkin 30 days to file an amended complaint. If Mr. Durkin does not  
12 file an amended complaint that complies with the court's rules within 30 days of the date  
13 of this order, the court will dismiss his complaint with prejudice.

14 Finally, the court directs Mr. Durkin to the court's pro se manual, "Filing a  
15 Complaint in your Own Behalf," which is available in hard copy and can be obtained by  
16 calling the clerk's office at 206-370-8450 or accessed online through the court's website  
17 at <http://www.wawd.uscourts.gov>.

18 Dated this 10th day of February, 2011.

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20   
21 JAMES L. ROBART  
22 United States District Judge